

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24

ALDERWOODS PUERTO RICO, INC.¹

Employer

and

UNION DE TRONQUISTAS DE PUERTO
RICO, LOCAL 901, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

Case 24-RC-8285

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding², the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

¹ The name of the Employer has been changed to reflect its correct legal name.

² The Employer's briefs were duly considered.

³ The Employer owns and operates various funeral parlors and cemeteries in Puerto Rico including El Señorial Memorial Park and Funeral Home in San Juan. The parties signed two stipulations containing commerce information. In the first stipulation (Board Exhibit 2) the parties agreed that the Employer derived gross revenue in excess of \$50,000.00 whereas in the second (Board Exhibit 3), the parties stipulated that the Employer derives gross revenues in excess of \$500,000. However, this second stipulation adds that an amount equal to this sum was also shipped to Puerto Rico from points and places located outside the Commonwealth of Puerto Rico. Since it appears that the parties' intent was to satisfy the applicable jurisdictional standards in this industry and it appearing that the Employer would meet the

3. The Union is a labor organization within the meaning of Section 2(5) the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9(b) and Section 2(6) and (7) of the Act.

5. The Petitioner seeks to represent approximately 11 employees in a unit of all construction and maintenance employees including gardeners and burying employees employed by the Employer at its facility known as El Señorial Memorial Park and Funeral Home in San Juan, Puerto Rico, but excluding all other employees, guards and supervisors as defined by the Act. The Employer contends that the requested unit is inappropriate and that a multi-location unit consisting of about 62 employees employed at its eleven locations is the only appropriate unit because there is highly centralized control over its operations and labor relations. The Employer further contends that the localities are functionally integrated and do not have a separate identity but are all subject to uniform working conditions, have similar functions and skills, common supervision and substantial employee interchange between the various locations.

The record reflects that El Señorial Memorial Park and Funeral Home is one of eleven localities in Puerto Rico of Alderwoods, a holding company engaged in providing funeral and cemetery services in the United States. Puerto Rico is included in the southeast region⁴ and employs approximately 150 employees distributed among 11 localities, 62 of which are included in the unit that the Employer claims appropriate herein.⁵ The record reveals that the traveling distance between localities in Puerto Rico varies from ten minutes to two hours.

The Puerto Rico regional office which is located in Trujillo Alto, Puerto Rico and is directed by Zulma Acosta, Market General Manager has a support group of three managers in the areas of construction and maintenance, funeral parlors, and market administration. Javier Bernal, manager of construction and maintenance, is responsible for the overall supervision of the Employer's construction and maintenance workers in the various locations. His responsibilities also include equipment

gross volume of business and that the Employer's out-of-state purchases are *de minimis*, jurisdiction is asserted herein. See *Catholic Cemeteries*, 295 NLRB 966 (1989) and cases cited therein.

⁴ The record reflects that Alderwoods is organized into five regions, which are divided geographically, and that only the unit in Illinois is represented, specifically by the Service Employees Local No. 1, Division 106-4A, which represents the cemetery ground employees in a multi-location bargaining unit.

⁵ Alderwoods has the following eleven locations: Alderwoods PR and Gonzalez Lago Funeral Home at Trujillo Alto, Gonzalez Lago Funeral Home at San Juan; Porta Coelli Funeral Home at Bayamón; El Señorial Memorial Park and Funeral Home at San Juan; Valle de Los Sueños Memorial Park; Camposanto de Cristo Resucitado at Ponce; Las Mercedes Memorial Park at Ponce; Monte Cristo Memorial Park at Aguadilla; Los Jardines Memorial Park at Isabela; Los Rosales Memorial Park at Aguada; and Pepino Memorial Park and Funeral Home at San Sebastian.

maintenance, employee safety and serving as a conduit between employees and management.

The record reflects that construction workers do routine maintenance work such as making concrete burial vaults, mausoleums and other related work. When not performing construction work, these employees may be assigned to do the upkeep of landscaped areas and provide maintenance on equipment and the Employer's facilities. Maintenance employees on the other hand, are assigned to perform the up keeping of the landscaped areas, mowing the grass, general facilities hygiene care, burial preparation, general maintenance and cleanliness. On occasions the maintenance employees are requested to care for and console members of grieving families. The positions of grounds keeper and backhoe operator are part of the maintenance classification that are generally responsible for maintaining the parlor grounds.

The record reflects that some locations offer services that are actually performed by other funeral parlors such as embalming, transporting corpses and burial. For example, when embalming services are requested by a client of a funeral home that does not perform this service locally, the service is provided by the nearest funeral home. To this end, a maintenance employee is used to transport the corpse from such funeral parlor to the service providing facility. The record also reflects that when a corpse is going to be viewed in González Lugo-San Juan and buried in El Señorial Memorial cemetery, the corpse is prepared and embalmed in González Lago and then the employees of Gonzalez Lago-San Juan participate in the funeral procession to El Señorial Memorial. In this case employees of El Señorial receive the corpse from the Gonzalez Lugo-San Juan employees and perform all the remaining burial services. Employees from the petitioned-for unit are also required to perform unit related work in other funeral homes or cemeteries in Ponce, Bayamón, Trujillo Alto and to substitute for workers assigned in such locations.

The record reveals that supervisors under the general direction of an area manager perform the day-to-day supervision of employees at each locality. In some instances these local managers also direct the work of more than one site. For example, Location Manager María Amador and Sales Manager Carmen Martí direct the work of one maintenance employee at Campo Santo de Jesucristo Resucitado together with the three construction and three maintenance workers in Las Mercedes Memorial Park. Also, Location Manager Antonio Torrecilla collectively manages the four maintenance employees in Gonzalez Lago-San Juan, the one maintenance employee in Gonzalez Lago-Trujillo Alto and Porta Coelli-Bayamón, which has no employees. The record also reflects that the managers of Pepino Memorial Park and El Señorial Memorial Park also manage other unidentified funeral parlors. Additionally, when the local manager is unavailable, employees are authorized to call the regional managers directly to deal with any problems at work.

The record also established that supervisors are also routinely assigned to cover more than one geographical area. For example, the record reflects that not only are area managers shared, but that some supervisors are also temporarily transferred

between areas on a routine basis. Thus, when transferred to these other localities, these supervisors not only direct the work of the employees who they bring but the host employees as well. In this regard it appears that there is more of this employee/supervisor interaction in funeral homes and cemeteries that are closer geographically to one another or when the assignments are longer in duration. The use of common equipment and transportation such as hearses also accentuates the need for employees from different localities to interact. The record reflects that employees have to pick up or deliver equipment including cars and trucks between locations.

The record reflects that both maintenance and construction employees for all localities share the same benefits and terms and conditions of employment. Thus, the employees have the same skills and training and have the same work schedule depending, of course, on the nature of their assigned work. Generally construction and maintenance employees are assigned to work one of two work shifts either from 8:00 a.m. to 5 p.m. or 7 a.m. to 4 p.m. Because funeral parlors operate around the clock, however, some employees work extended work schedules. Salaries for maintenance and construction employees are established within a salary range that varies depending on the number of years the employee has been with the company. The record reveals that overtime work has to be pre-approved by the regional manager. Thus, when a Location Manager needs construction or maintenance employee to work overtime, the manager is required to obtain regional office authorization. Furthermore, a uniform denoting the employee's name identifies all employees and the location assigned.⁶

With regard to employment policies the record reveals that the same overall personnel manual that is formulated by the Employer's parent company for all the construction and maintenance employees is also applied uniformly to employees in Puerto Rico. Likewise the Market General Manager makes employee hiring, layoff, recall, discipline and all other personnel actions. Thus, this central manager must approve the filling of all positions. In this respect, while the Location Manager performs the preliminary interview of the candidates, it is the Market General Manager who makes the decision regarding hiring and the salary to be paid. The record also reflects that Location Managers have no authority to give promotions, salary increases, issue disciplinary warnings or discharge an employee without the consent of the Market General Manager. The Location Manager is to call the central office, discuss the situation giving rise to the proposed personnel action, and get approval to issue the warning and then have the central office draft the language to be used for said warning. In this same vein, all employee evaluations are sent to the regional office for Market General Manager's approval. It is at the regional office where these evaluations are reviewed and approved. Finally, the regional office is the custodian of all employee files.

⁶ The record reflects that there are several uniforms for employees. There is a uniform reserved for the daily work and a formal uniform used when employees are going to be dealing directly with the families, which is somewhat more formal. The formal uniforms are the same for all sites and the uniforms at the funeral parlors and cemeteries are also the same throughout the localities.

The record reflects that employees among localities may be permanently or temporarily transferred from one location to another. However, these transfers have to be approved by the Market General Manager or the manager for construction and maintenance. The temporary transfer, which constitutes the majority of these transfers, is approved by Mr. Bernal, the Maintenance and Construction Manager. At least 50% of the employees are temporarily exchanged between locations. The Employer does not keep formal records of employee interchange aside from the employees' timesheet. At some locations employees have a permanent schedule that requires them to move from one location to another. In certain instances where a locality has a specific construction job that needs to be done and has no construction employees, the latter are brought in from other localities. This explains why construction employees from El Señoríal Memorial Park may be frequently used to perform construction jobs at Porta Coeli, Gonzalez Lago-San Juan, Gonzalez Lago-Trujillo Alto, Cristo Resucitado, where there are no construction workers permanently assigned. In this same vein the parlors in Los Jardines, Los Rosales, and Valle de los Sueños also have no permanent construction employees assigned to these localities so that construction employees from the petitioned-for unit and other localities such as Pepino may be required to work in other areas.

The actual coordination of the work to be performed in the Employer's funeral homes is the responsibility of Mr. Bernal who assigns the date, time, location, and the employees that will perform the work. When employees are assigned to work in locations outside of their normal work place, they have direct contact with the employees of other localities who assist them in preparing the cement for the construction, the materials needed and the equipment required. In this regard the evidence reveals that a construction job may vary depending on the complexity of the construction work which may be anywhere between a day to a full year. Localities often share the same equipment and vehicles because equipment and vehicles are often damaged or in need of repairs. The record also reflects that employees are often transferred to other locations to cover employee absences due to sickness, vacations, or other reasons.

A single-facility unit is presumptively appropriate, unless the single facility has been effectively merged into a more comprehensive unit, or is so functionally integrated with another unit that it has lost its separate identity. *Dattco, Inc.*, 337 NLRB No. 7 (2002); *Budget Rent-A-Car*, 337 NLRB No. 147 (2002); *Waste Management Northwest*, 331 NLRB 309 (2000); *R & D Trucking*, 327 NLRB 531 (1999); *J&L Plate*, 310 NLRB 429 (1993). To determine whether the single-facility presumption has been rebutted, the Board looks at such factors as the similarity of employee skills, functions and training, the distance between the facilities, the functional coordination in operations of the facilities, common supervision, centralized control of operations and labor, contact between employees at different facilities, employee interchange (particularly temporary transfers) between facilities, common wages, benefits, and terms and conditions of employment, and bargaining history, if any. See *Waste Management Northwest*, supra, *New Britain Transportation Co.*, 330 NLRB 397, 397 (1999).

The Board does not consider any one single factor to be determinative. For example, in *Waste Management Northwest, supra*, the Board found, contrary to the Regional Director, that the functional integration of operations and centralized control over labor relations policies outweighed other factors that were found to be controlling in other cases. The Board stated that the lack of local autonomy and common supervision of employees at both locations; identical skills, duties, and other terms and conditions of employment; and the evidence of interaction and coordination between the two groups outweighed two important factors which would favor the single-facility presumption – the 42 mile distance between the two facilities and the Employer's failure to introduce relevant affirmative evidence demonstrating more than minimal interchange. In *R&D Trucking, supra*, the Board found that single location presumption had also been overcome because there was no local autonomy of operation. In yet another case, *Budget Rent-a-Car, supra*, the Board found significant the sharing of managers at different stores, the permanent transferring of employees within unit stores and that one of the stores was viewed as the supplier of the other localities' labor pool. Finally, in *Dattco*, the Board found significant the highly centralized control over labor relations and daily working conditions of its employees including the central coordination of all bus routes.

In the instant case the evidence reveals that the petitioned-for unit is not an appropriate single facility unit because it is so functionally integrated with the Employer's other operations that it has lost its separate identity. Thus, the petitioned-for unit is subject to uniform working conditions, have similar functions and skills, common supervision and have substantial employee interchange with the various other locations. This interchange takes place as employees are temporarily transferred, to and from one facility to another, services such as embalming are provided in all facilities but actually performed by only some of its facilities and the sharing of management and direct supervision between localities. Thus, the record reveals that not only are area managers shared, but also some supervisors are temporarily transferred between localities. Because of this interchange, transferred employees and supervisors interact with the various location employees as they give each other support by performing tasks that are inter-related. Furthermore, because of the repeated temporary transfer of employees and supervisors between locations for long periods of time there is frequent interchange with employees of other locations.

The record further reveals that the Employer has a highly centralized management in the regional office. It is in the regional office where all labor and management related decisions are made. The evidence demonstrated that labor policies are established in the regional office and equally applied at all locations. Furthermore, all employment procedures have to be requested and approved by the regional office. This high degree of control extends to all the phases of the hiring process and extends throughout all the terms and conditions of employment including work schedules, annual leave, evaluations, promotions, discipline, and discharges. Also, location managers lack authority to make decisions that can affect the terms and conditions of employment of location employees. The centralized control over daily operations has also been extended to the economical aspect of each locality. Thus, every expense over one hundred dollars has to be approved by the regional office.

Finally, the evidence clearly reveals that the central office has such extensive control over the operations of each area office that it controls every aspect of its daily activity including all terms and conditions of employment.

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing, I find that the following employees of the Employer constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All construction and maintenance employees including gardeners and burying employees employed by the Employer at its facilities located at Trujillo Alto, San Juan, Bayamón, Ponce, Aguadilla, Isabela, Aguada and San Sebastian, Puerto Rico,

EXCLUDED: All other employees, guards and supervisors as defined in the Act.

There are approximately 62 employees in the unit found appropriate herein.⁷

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. These eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by Union de Tronquistas de Puerto Rico, IBT, Local 901, AFL-CIO.

⁷ As I have directed an election in a unit larger than the one sought by the Petitioner, the Petitioner is hereby granted 14 days to submit the additional evidence of showing of interest. These 14 days will be counted from the date of this decision or, if applicable, from the date the Board denies any request for review of the unit scope findings in this decision.

LIST OF VOTERS

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, two (2) copies of an election eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, La Torre de Plaza, Suite 1002, 525 F.D. Roosevelt Avenue, San Juan, Puerto Rico 00918-1002, on or before January 9, 2002. No extension of time to file this list shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. The Board in Washington must receive this request by January 16, 2003.

Dated at San Juan, Puerto Rico this 2nd day of January 2003.

Luis F. Padilla
Acting Regional Director

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